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SUBJECT: RESEARCH REQUEST TO SUPPORT U.S. POSITIONS ON  
REFORMING UN SYSTEM OF ADMINISTRATION OF JUSTICE

REF: A. A) 07 USUN 1223

[B. B\) 07 USUN 2239](#)

[1](#)1. This is an action request. Please see para 3.

[1](#)2. BEGIN SUMMARY: In Resolution 62/228, adopted on December 22, the General Assembly decided to establish a new system of administration of justice for the UN but deferred decisions on several issues that are critical to meaningful systemic reform, and on which delegations could not reach consensus (ref A). These issues include the jurisdiction of the Dispute Tribunal and Appeals Tribunal, grounds of appeal, the compensation to be awarded, and the role of staff associations. The Fifth Committee will consider these issues during its second resumed session in May, and an Ad Hoc Committee (which will convene Sixth Committee experts) will discuss these and other legal aspects of the reform when it meets in April. Mission expects significant opposition from the European Union, Russian Federation, and G-77 bloc on many of the open issues. END SUMMARY.

[1](#)3. BEGIN ACTION REQUEST: To help advance U.S. positions in both the Fifth Committee and the Ad Hoc Committee this spring, Mission requests assistance from the Office of the Legal Adviser in researching and drafting non-papers discussing relevant U.S. and representative international practice (from the five geographic regions represented in the UN) on key open issues. Mission would provide those non-papers to UN counterparts, in an effort to rebut other delegations, insistence that the proposed aspects of the new system of justice opposed by the United States are consistent with international practice or even necessary to protect human rights. The following are the outstanding issues for which we are requesting research assistance:

(a) Jurisdiction of the UN Dispute Tribunal (UNDT) and UN Appeals Tribunal (UNAT). Do the United States, other states, or other international organizations permit individuals to bring claims challenging &conditions of employment8 (as opposed to claims arising from the written terms of an individual,s relevant employment contract and the applicable staff regulations and rules) and if so, on what legal basis?

(b) Number of judges ) The resolution provides for a single judge at the UNDT (trial) level and for a three-judge panel to hear cases at the UNAT (appellate) level. USUN supports this arrangement. However, the resolution also asks for further proposals regarding the use of a three-judge panel to decide UNDT cases, a measure the EU and many G-77 delegations support, particularly for disciplinary proceedings. Which systems of internal justice provide one versus three judges at the initial hearing of a case, which systems do not, and in what other ways do they differ? What are EU (in particular, French, German, and Portuguese) practices in this regard? Do any international organizations provide three-judge panels at the trial level?

(c) Grounds of appeal before the UN Appeals Tribunal ) Appellate jurisdiction remains under consideration, with many delegations, including those in the G-77, supporting the UN Secretariat's proposal that the UNAT should have

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jurisdiction if the UNDT has erred on a question of material fact.<sup>8</sup> Many delegations argue that the appellate body must be able to consider errors of fact since judges are fallible. Our position is that appeals should be based only on matters of law, not fact; an exception would apply in instances where relevant factual information that could not be known during the UNDT phase became known after a UNDT judgment. What state practice supports our position? What safeguards are built into our system and comparable systems to ensure that claimants receive fair treatment? What other systems allow fact-based appeals? Do such systems contain any safeguards to ensure that claimants do not receive a second trial at the appellate level?

(d) Compensation awarded by the Tribunals and alternatives ) Also to be decided is whether the tribunals can grant specific performance and if so, under what circumstances. USUN supports limiting judgments to compensation only, with two years, salary being the normal cap. Are there precedents for imposing such limits?

(e) The role of staff associations in the formal system of justice ) The UN Secretariat has proposed to allow UN staff associations to file the equivalent of class action claims, as well as to bring claims to enforce the staff associations, rights and to file friend-of-the-court briefs or intervene on behalf of individual claimants. Do any other governments or international organizations allow staff associations/unions to file class actions on behalf of government employees? Are there governments or international

organizations that do not permit such class action claims?

(f) Arbitration alternatives ) The UN Secretariat has proposed that the new system of justice be extended to UN consultants and contractors, arguing that this category of non-staff officials does not have access to an effective remedy. The UN's contracts for this category of non-staff officials provide for arbitration under the UNCITRAL rules, a process the Secretariat argues is too cumbersome. Post requests research into what dispute-resolution mechanisms might exist as an alternative to formal arbitration, such as the use of local, ad hoc arbitrators to consider small claims, rather than handling all arbitration centrally.

(g) Pro bono legal assistance ) Resolution 62/228 established the UN Office of Staff Legal Assistance, consisting of one chief of unit, two legal officers and three legal assistants in New York and one legal officer each in Geneva, Nairobi, Addis Ababa and Beirut. The Office's mandate remains under discussion; the United States has argued that the Office's mandate should be limited to providing information and advice to staff members regarding the system of justice, rather than to representing individual claimants, issuing legal opinions, engaging in legal research and drafting, or otherwise serving as individual advocates. The UN Secretariat asserts that the Office should represent individuals because the UN Panel of Counsel, which the Office replaced, acted as counsel of record for staff members. USUN's view is that the Panel of Counsel exceeded its mandate by doing so. Are there precedents for governments or international organizations to provide pro bono legal assistance to represent employees in labor/management disputes?

END ACTION REQUEST.

14. Post appreciates L's assistance in preparing for the upcoming Fifth and Sixth Committee meetings.

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